

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.564 of 2010

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Alok Ranjan Pandey & Ors.

.... Petitioner/s

Versus

Ram Bachan Choudhary & Ors.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Om Prakash Pandey

For the Opp.Party : Mr. Radha Mohan Pandey

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

CAV JUDGMENT

Date: 16 -12-2015

This revision application has been filed by the defendants-petitioners against the order dated 05.03.2010, passed by Sub- Judge-Ist, Babhua, Kaimur, in Title Suit No. 217 of 2006, whereby the Court below has rejected the application under Order 7 Rule 11 C.P.C filed by the defendants-petitioners.

2. The aforesaid Title Suit No. 217 of 2006 was filed by the plaintiffs- opposite parties praying for declaration that the compromise dated 11.08.2004 in Consolidation Revision Case and correction in Chak Khatian are illegal, inoperative and without jurisdiction and null and void and it is not binding on the plaintiffs.

3. According to the plaintiffs, Chandra Jota Kuer has executed a gift deed dated 13.09.1976 in favour of the plaintiff no.1 with regard to the suit land. During the consolidation proceeding Chak Khata No. 18 and 18 (K) was prepared in the name of the plaintiff No.1 Ram Bachan Choubey. The said Chandra Jota Kuer was



recorded in the Revisional Survey Record. After obtaining gift deed from her, the plaintiff No.1 had sold the suit land to the plaintiff No.2 to 8 by registered sale deed and the defendants had filed Title Suit No. 100 of 2004 for declaring the gift deed as illegal and without any right. In the said suit, the present plaintiffs are the defendants. According to the plaintiffs Chandra Jota Kuer, acquired absolute ownership after passing of Hindu Succession Act and after transfer made by her, the plaintiff No.1 came in possession of the property and is continuing as such for more than 12 years and thus has acquired title by adverse possession also. The plaintiffs learnt that there was compromise between the other parties and the plaintiffs are not the signatories to the said compromise. Therefore, the compromise order obtained by the defendants with Baij Nath Pandey is null & void and it is not binding on the parties.

4. The defendants-petitioners herein appeared and filed an application under Order 7 Rule 11 C.P.C praying for rejection of the plaint. Their case is that in Title Suit No. 142 of 1977 filed by Baij Nath Pandey for partition was abated with regard to the agricultural land and it came finally before the Joint Director, Consolidation. In Consolidation Revision No. 355 of 1978-79 wherein Baijnath Pandey was the petitioner and plaintiff No.1, herein, was one of the opposite parties. The present suit land was also the subject matter in the said revision before Joint Director, Consolidation. The Joint Director,



Consolidation held that the Will executed by Shiv Kumar Tripathi was valid, legal and in terms of Will Rajendra Tiwary was entitled for 1/4th share, Baij Nath Pandey was entitled for 1/4th share and Smt. Vidya Devi was entitled to 1/2 share. The testator Shiv Kumar Tripathi was the absolute owner of the property, who executed the Will in favour of the above persons. The Joint Director further held that any transfer made with regard to the property of Will was illegal and void. The plaintiff No.1 did not challenge the said order of Joint Director. Some other parties have filed C.W.J.C. No. 6676 of 1991 and C.W.J.C. No. 1209 of 1991. This court after hearing the parties held that the properties covered by Will can not be transferred and it has rightly been held to be void by the revisional authority. In the First Appeal No. 286 of 1987 arising out of Title Suit No. 142 of 1997, the High Court by judgment and decree dated 06.06.1996 has held that Mostt. Chandra Jyota Kuer was having a life state with no power to alienate/ dispose of the property in terms of the Will. In fact, the relief claimed in the plaint, the plaintiffs are trying to set aside the compromise order passed by the Joint Director, Consolidation and therefore, the Suit is also barred under Section 37 of the Bihar Consolidation Act and the plaintiffs have got no cause of action.

5. By the impugned order, the court below has rejected this application filed by the defendants.

6. Learned counsel, Mr. Om Prakash Pandey, appearing



on behalf of the petitioners has submitted that the present plaintiffs of the Suit are claiming title on the basis of the gift deed executed by Chandra Jota Kuer. Since it has already been held by the Joint Director, Consolidation in the Consolidation Revision Application that Chandra Joyta Kuer had only life interest in the subject matter of Will as she has been granted the life interest only in the will, she would not have transferred the property and the High Court confirmed that order. In the First Appeal also the High Court held that Chandra Jyota Kuer had no transferable right. In such circumstances, now the plaintiffs who are transferees from Chandra Jyota Kuer can not claim any relief of declaration with respect to either the compromise order or pray for correction of the khatian and they can not say that the order is not binding on them. Since the plaintiffs are claiming through Chandra Jyota Kuer and have got no independent right, therefore, claim is also barred by the principles of res judicata. Since their prayer is indirectly to set aside the compromise order recorded by the Joint Director, Consolidation, the Suit is also barred under Sections 37 and 39 of the Bihar Consolidation Act. But the learned Court below without considering all these matters has held that the cause of action is a bundle of facts giving rise to the right to sue, which can be examined at the final stage of hearing and not at this stage.

7. Learned Counsel for the petitioners has further submitted that in the plaint, the plaintiffs intentionally did not plead

the true fact but then the judgment of the High Court would have been looked into by the trial court at the time of deciding the application under Order 7 Rule 11 C.P.C but the court below has passed a cryptic order without applying his judicial mind.

8. On the other hand, the learned counsel appearing on behalf of the respondents submitted that at the time of hearing, the application under Order 7 Rule 11 C.P.C., the Court cannot look into the defence case. The Court is required to peruse the plaint and discloses the cause of action or not. The Court below has, therefore, rightly did not rely on the statements/ submissions made by the defendants-petitioners and rejected the application. Moreover the plaintiffs are not the signatories to the compromise and that Will was probated in favour of Chanadra Jyota Kuer, who died in the year 1976 and therefore, she became the absolute owner of the property and had rightly executed the gift deed in favour of the present petitioners.

9. In support of their contentions, both the parties have relied upon various decisions such as the petitioners relied upon A.I.R 2010 Patna 189 (Bhagirath Prasad Singh Vrs. Ram Narayan Rai & anr), whereas learned counsel for the opposite party has relied upon 2012 (2) PLJR 592 (I.T.C. Limited Vs. Shakuntla Devi) and 2015 (8) SCC 331(P.V.Guru Raj Reddy –v- P.Neeradha Reddy).

10. From perusal of the impugned order dated 05.03.2010 it appears that the learned court below has only recorded



the submissions of the learned counsel appearing on behalf of both the parties and then at last, he has only stated that cause of action is a mixed question of law and fact and consists of bundle of facts. It is not the stage to go into the details of the facts pleaded by the parties. At this stage without considering the evidences produced by both the parties, it can not be said that the facts stated by the plaintiffs in the plaint is correct or not. It is needless to say that whether the plaintiffs have any valid cause of action or not shall be one of the issues for consideration at the time of final hearing.

11. From perusal of the impugned order it appears that the court below proceeded to decide as to whether there is cause of action or not without considering that Order 7, Rule 11(a) speaks about “where the plaint does not disclose cause of action” and not whether plaintiff has cause of action or not. Therefore it is the duty of the court to exercise jurisdiction under Order 7 Rule 11 CPC and pass appropriate order.

12. The Hon’ble Supreme Court in the case of N.V. Srinivasa Murthy –v- Mariyamma, 2006 (1) PLJR 1 S.C. has held at para 17 as follows:

“The trial court must remember that if on a meaningful – no formal- reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise its power under Order 7, Rule 11 C.P.C.”

13. Here the court below has, in fact, refused to exercise this jurisdiction vested in it by law on erroneous ground as it is not the case of the defendant that the plaintiff has no cause of action. Therefore, in my opinion, the approach of the court below is wrong. The rights of the parties are determined at this stage and if plaint is rejected then it will be a decree and statute provides forum of appeal. Therefore, the court cannot say that the matter shall be decided later on.

14. In view of the above settled principle of law, the impugned order is unsustainable.

15. In the result, this revision application is allowed. The impugned order is set aside and the matter is remanded to the court below for passing a fresh order according to law after hearing both the parties without being influenced by any observation on merit if made in this judgment.

(Mungeshwar Sahoo, J)

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